

ORDINANCE NO. 2010.48

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF TEMPE, ARIZONA,
AUTHORIZING THE MAYOR TO EXECUTE
SUCH DOCUMENTS AS ARE NECESSARY TO
TRANSFER OWNERSHIP OF PROPERTY TO
RP HFL, LLC, AND TERMINATE A LEASE
THEREBY ALLOWING THE PROPERTY TO
BE RETURNED TO THE TAX ROLLS.**

WHEREAS, RP HFL, LLC's, predecessor-in-interest, Hayden Ferry Lakeside, LLC ("Owner") deeded certain property to the City of Tempe pursuant to that certain Quit-Claim Deed, dated October 14, 2002, recorded as Document No. 2002-1256968 in the records of Maricopa County, Arizona Recorder; and

WHEREAS, after the conveyance, the City of Tempe and the Owner entered that certain Lease dated October 14, 2002 (the "Lease"); and

WHEREAS, a Memorandum of Lease dated October 29, 2002 was recorded as Document No. 2002-1256967 of the records of the Maricopa County, Arizona Recorder (the "Memorandum"), to provide notice of the existence of the Lease; and

WHEREAS, the Lease term expired October 14, 2010, and the parties desire to provide for re-conveyance of the property to Owner so that it may be returned to the real property tax rolls.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. The Mayor is authorized to execute such documents as are necessary to evidence termination of the Lease and reconvey the property to Owner, including without limitation, an Agreement to Convey Premises, Notice of Lease Termination, and Quit Claim Deed in substantially the forms of such documents attached hereto as ***Exhibit A***.

Section 2. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

{Signature follows}

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
TEMPE, ARIZONA, this _____ day of _____, 2011.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A
of Ordinance No. 2010.48

**AGREEMENT TO CONVEY PREMISES
AND ACKNOWLEDGEMENT OF LEASE TERMINATION**

THIS AGREEMENT TO CONVEY PREMISES AND ACKNOWLEDGEMENT OF LEASE TERMINATION (“Agreement”) is made and entered into to be effective _____, 201__ (the “Effective Date”) by and among THE CITY OF TEMPE, an Arizona municipal corporation (“Landlord”), and RP HFL LLC, a Delaware limited liability company (“Tenant”), successor to Hayden Ferry Lakeside, LLC (“HFLLLC”) as described below, and is as follows:

W I T N E S S E T H:

WHEREAS, HFLLLC deeded certain real property to the City of Tempe pursuant to that Quit-Claim Deed, dated October 14, 2002, and recorded as Document No. 2002-1256968 of the records of Maricopa County, Arizona Recorder; and

WHEREAS, after the conveyance, Landlord and HFLLLC entered that certain Lease, dated October 14, 2002 (the “Lease”), covering the real property conveyed to the City, and described on Exhibit A to the Lease and which is further described on **Exhibit A** attached hereto and incorporated herein by reference (the “Premises”); and

WHEREAS, a Memorandum of Lease, dated October 29, 2002, was recorded as Document No. 2002-1256967 of the records of the Maricopa County, Arizona Recorder (the “Memorandum”) to provide notice of the existence of the Lease;

WHEREAS, HFLLLC thereafter assigned to Rockpoint Fund III Acquisitions, L.L.C., a Delaware limited liability company (“Rockpoint”), and Rockpoint assumed, HFLLLC's interest under the Lease and the Memorandum, pursuant to an Assignment and Assumption of City Lease and Amendment of Memorandum of Lease, dated July 15, 2010, and recorded July 16, 2010, as Document No. 20100607123 of the records of the Maricopa County, Arizona Recorder; and, immediately thereafter, Rockpoint assigned to Tenant, and Tenant assumed, Rockpoint's interest under the Lease and the Memorandum, pursuant to an Assignment and Assumption of City Lease and Amendment of Memorandum of Lease, dated July 15, 2010, and recorded July 16, 2010, as Document No. 20100607124, resulting in Tenant now holding all right, title and interest of the tenant/lessee under the Lease and the Memorandum; and

WHEREAS, the term of the Lease has expired and the parties desire for Landlord to reconvey the Premises to Tenant, subject to the conditions and in accordance with the terms and provisions of this Agreement as provided below.

NOW, THEREFORE, for Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereby agree as follows:

1. Conveyance of Premises and Termination of Lease. Subject to approval of this Agreement by the Tempe City Council at a formal City Council meeting, Landlord shall execute and deliver to Tenant a Quit Claim Deed re-conveying title to the Premises to Tenant in the form attached hereto as **Exhibit B** (the “Deed”) and the Notice of Termination of Lease in the form attached hereto as **Exhibit C** (the “Termination”).

2. Closing Procedures. Upon receipt of Tempe City Council approval, Landlord shall deliver its original signature counterparts to the Deed and the Termination to Tenant. Tenant shall cause the recordation of the Deed and the Termination within ten (10) business days thereafter. Tenant shall pay all costs, expenses and fees associated with the re-conveyance, including without limitation all recording fees.

3. Acknowledgement of Lease Termination Date. Landlord and Tenant acknowledge and agree that the term of the Lease expired October 14, 2010.

4. General Provisions.

A. Attorneys Fees and Costs. In the event of any suit instituted by either party against the other in any way connected with this Agreement, the parties agree that the successful party in any such action shall recover from the other party a reasonable sum for its attorneys’ fees and costs in connection with said suit, such attorneys’ fees and costs to be fixed by the court.

B. Entire Agreement. This Agreement along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant with respect to the subject matter hereof and this Agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Landlord and Tenant agree that all prior or contemporaneous oral agreements between and among themselves and their agents and representatives relative to this Agreement or the subject matter hereof are merged in or revoked by this Agreement.

C. Binding Effect; Choice of Law. All of the provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement shall be governed by the laws of the State of Arizona.

D. Waiver of Jury Trial. Each party irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or in connection with this Agreement or any matter arising hereunder.

E. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally

delivered, delivered by a recognized overnight courier service or mailed by United States certified or registered mail, return receipt requested, postage prepaid, as follows:

If to Landlord: City of Tempe
City Attorney's Office
P. O. Box 5002
21 East Sixth Street, Suite 201
Tempe, Arizona 85280
Attention: City Attorney

If to Tenant: Sunbelt Holdings
6720 N. Scottsdale Rd Ste 160
Scottsdale, AZ 85253
Attention: Heidi Kimball

and to: Greenberg Traurig LLP
2375 E. Camelback Road, Suite 700
Phoenix, AZ 85016
Attention: Lesa J. Storey

or to such other place or to such other persons as any party shall from time to time notify the other in writing as provided herein. The date of service of any communications hereunder shall be the date of personal delivery, the date of delivery by overnight courier or 72 hours after the postmark on the certified or registered mail, as the case may be.

F. Waiver. No covenant, term or condition or the breach thereof shall be waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

G. Counterparts; Facsimile Signatures. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. It is further acknowledged and agreed that scanned and/or facsimile copies will be acceptable in place of originals.

H. Exhibits. The exhibits described herein and attached to this Agreement are incorporated in this Agreement by this reference.

5. No Conveyance or Encumbrance by Landlord. Landlord represents and warrants that it has not transferred, conveyed or encumbered the Premises or its interest in the Lease in any manner except as permitted in the Lease and that Landlord has not entered into any agreements or contracts regarding the Premises other than as requested or approved by Tenant.

6. Premises on Tax Rolls. Tenant acknowledges that the Premises shall be returned to the real property tax rolls for the 2010 tax year, effective on the date on which the Deed is recorded, and all subsequent tax years. Therefore, there will be no further taxation of the Premises after the recordation of the Deed under the Government Property Lease Excise Tax, A.R.S. §42-6201, et seq.

7. Assignment of rights. Landlord hereby assigns to Tenant all of Landlord's rights, title and interest, if any, in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Premises to which the Landlord is a party and which are assignable by Landlord.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date set forth above.

{Signature pages follow}

LANDLORD:

THE CITY OF TEMPE, an Arizona
municipal corporation

By: _____
Hugh Hallman, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 201_ by Hugh Hallman the Mayor of The City of Tempe, an Arizona municipal corporation, for and on behalf of said City.

Notary Public

Notary Seal:

TENANT:

RP HFL LLC, a Delaware limited liability company

By: _____
Sean T. Walters, its Vice President

STATE OF New York)
) ss.
County of New York)

The foregoing instrument was acknowledged before me this _____ day of _____, 201_ by Sean T. Walters in his capacity as Vice President of RP HLF LLC, a Delaware limited liability company.

Notary Public

Notary Seal:

Exhibit "A"
of Exhibit A
the "Premises"

LEGAL DESCRIPTION: P-1 PARCEL

REVISED 10/07/02

A parcel of land located in the Northwest Quarter of Section 15, Township 1 North, Range 4 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a 5/8 inch rebar found at the center of said Section 15, from which a 5/8 inch rebar located at the West quarter corner of said Section 15 bears South 89°03'17" East, a distance of 2,629.85 feet:

THENCE North 00°11'25" East, along the East line of said Northwest quarter, a distance of 863.51 feet;

THENCE North 84°59'09" West, a distance of 735.58 feet to the Northeast corner of that parcel of land described in Exhibit "A" of recording no. 2001-0154530, records of Maricopa County, Arizona;

THENCE South 07°38'30" East a distance of 403.37 feet to a point on the arc of a non-tangent curve concave to the South, a radial line of said curve through said point having a bearing of North 14°39'06" West;

THENCE Westerly along the arc of said curve, to the left, having a radius of 811.00 feet, with a chord of South 73°25'29" West 54.45 feet, and a central angle of 03°50'51" for an arc distance of 54.46 feet to a non-tangent line;

THENCE South 62°28'04" West a distance of 100.32 feet to the POINT OF BEGINNING;

THENCE South 62°28'04" West a distance of 17.34 feet to a point on the arc of a non-tangent curve concave to the Southeast, a radial line of said curve through said point having a bearing of North 26°50'26" West;

THENCE Southwesterly along the arc of said curve, to the left, having a radius of 801.03 feet, West with a chord of South 58°49'42" West 120.98 feet, and a central angle of 08°39'43" for an arc distance of 121.10 feet to a non-tangent line;

THENCE South 54°29'50" West a distance of 201.79 feet to a point of curvature of a tangent curve concave to the Northwest;

THENCE Southwesterly along the arc of said curve, to the right, having a radius of 349.00 feet, West with a chord of South 59°53'00" West 65.52 feet, and a central angle of 10°46'20" for an arc distance of 65.62 feet to a non-tangent line;

THENCE North 33°02'35" West a distance of 146.48 feet;

THENCE South 56°47'25" West a distance of 11.25 feet;

THENCE North 33°02'35" West a distance of 40.12 feet;

THENCE North 56°47'25" East a distance of 11.25 feet;

THENCE North 33°02'35" West a distance of 46.00 feet;

THENCE North 09°25'21" East a distance of 32.52 feet to a point on the arc of a non-tangent curve concave to the North, a radial line of said curve through said point having a bearing of South 14°26'59" West;

THENCE Easterly along the arc of said curve, to the left, having a radius of 54.00 feet, West with a chord of North 73°32'22" East 55.48 feet, and a central angle of 61°49'13" for an arc distance of 58.27 feet to a non-tangent line;

THENCE South 30°17'42" East a distance of 2.80 feet;

THENCE North 56°21'43" East a distance of 19.05 feet;

THENCE South 29°37'58" East a distance of 5.13 feet;

THENCE North 56°41'42" East a distance of 217.45 feet;

THENCE North 33°21'27" West a distance of 33.03 feet to a point on the arc of a non-tangent curve concave to the South, a radial line of said curve through said point having a bearing of North 21°39'29" West ;

THENCE Easterly along the arc of said curve, to the right, having a radius of 521.96 feet, West with a chord of North 75°37'22" East 132.30 feet, and a central angle of 14°33'41" for an arc distance of 132.65 feet to a non-tangent line;

THENCE South 06°54'21" East a distance of 12.95 feet;

THENCE North 83°00'19" East a distance of 7.13 feet to a point on the arc of a non-tangent curve concave to the East, a radial line of said curve through said point having a bearing of South 82°37'01" West ;

THENCE Southerly along the arc of said curve, to the left, having a radius of 209.93 feet, with a chord of South 17°04'19" East 70.66 feet, and a central angle of 19°22'38" for an arc distance of 71.00 feet to a non-tangent line;

THENCE South 24°34'07" East a distance of 53.33 feet;

THENCE South 30°09'31" East a distance of 89.69 feet to the POINT OF BEGINNING.

Containing 2.2939 acres or 99,922 square feet, more or less.



Exhibit B
of Exhibit A
The “Deed”

WHEN RECORDED, RETURN TO:

City of Tempe Basket

EXEMPT from the
requirement for an
Affidavit per
A.R.S. § 11-1134(A)(3)

QUIT CLAIM DEED

For consideration of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the undersigned, **CITY OF TEMPE**, an Arizona municipal corporation (“**Grantor**”), does hereby convey, remise, release, sell and quit-claim to **RP HFL LLC**, a Delaware limited liability company, that certain real property described on **Exhibit A** attached hereto, including all improvements thereon and all appurtenances and privileges thereto (the “**Property**”).

.

Dated _____, 201_.

THE CITY OF TEMPE, an Arizona
municipal corporation

By:_____

Name:_____

Title:_____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 201_ by _____ the _____ of **THE CITY OF TEMPE**, an Arizona municipal corporation, for and on behalf of said City.

Notary Public

My Commission Expires:

EXHIBIT "A" of the "Deed"

LEGAL DESCRIPTION: P-1 PARCEL

REVISED 10/07/02

A parcel of land located in the Northwest Quarter of Section 15, Township 1 North, Range 4 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a 5/8 inch rebar found at the center of said Section 15, from which a 5/8 inch rebar located at the West quarter corner of said Section 15 bears South 89°03'17" East, a distance of 2,629.85 feet:

THENCE North 00°11'25" East, along the East line of said Northwest quarter, a distance of 863.51 feet;

THENCE North 84°59'09" West, a distance of 735.58 feet to the Northeast corner of that parcel of land described in Exhibit "A" of recording no. 2001-0154530, records of Maricopa County, Arizona;

THENCE South 07°38'30" East a distance of 403.37 feet to a point on the arc of a non-tangent curve concave to the South, a radial line of said curve through said point having a bearing of North 14°39'06" West;

THENCE Westerly along the arc of said curve, to the left, having a radius of 811.00 feet, with a chord of South 73°25'29" West 54.45 feet, and a central angle of 03°50'51" for an arc distance of 54.46 feet to a non-tangent line;

THENCE South 62°28'04" West a distance of 100.32 feet to the POINT OF BEGINNING;

THENCE South 62°28'04" West a distance of 17.34 feet to a point on the arc of a non-tangent curve concave to the Southeast, a radial line of said curve through said point having a bearing of North 26°50'26" West;

THENCE Southwesterly along the arc of said curve, to the left, having a radius of 801.03 feet, West with a chord of South 58°49'42" West 120.98 feet, and a central angle of 08°39'43" for an arc distance of 121.10 feet to a non-tangent line;

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THENCE North 33°02'35" West a distance of 146.48 feet;

THENCE South 56°47'25" West a distance of 11.25 feet;

THENCE North 33°02'35" West a distance of 40.12 feet;

THENCE North 56°47'25" East a distance of 11.25 feet;

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THENCE South 30°17'42" East a distance of 2.80 feet;

THENCE North 56°21'43" East a distance of 19.05 feet;

THENCE South 29°37'58" East a distance of 5.13 feet;

THENCE North 56°41'42" East a distance of 217.45 feet;

THENCE North 33°21'27" West a distance of 33.03 feet to a point on the arc of a non-tangent curve concave to the South, a radial line of said curve through said point having a bearing of North 21°39'29" West ;

THENCE Easterly along the arc of said curve, to the right, having a radius of 521.96 feet, West with a chord of North 75°37'22" East 132.30 feet, and a central angle of 14°33'41" for an arc distance of 132.65 feet to a non-tangent line;

THENCE South 06°54'21" East a distance of 12.95 feet;

THENCE North 83°00'19" East a distance of 7.13 feet to a point on the arc of a non-tangent curve concave to the East, a radial line of said curve through said point having a bearing of South 82°37'01" West ;

THENCE Southerly along the arc of said curve, to the left, having a radius of 209.93 feet, with a chord of South 17°04'19" East 70.66 feet, and a central angle of 19°22'38" for an arc distance of 71.00 feet to a non-tangent line;

THENCE South 24°34'07" East a distance of 53.33 feet;

THENCE South 30°09'31" East a distance of 89.69 feet to the POINT OF BEGINNING.

Containing 2.2939 acres or 99,922 square feet, more or less.



Exhibit C
of Exhibit A
the “Termination”

WHEN RECORDED, RETURN TO:
City of Tempe Basket

NOTICE OF TERMINATION OF LEASE

THIS MUTUAL TERMINATION OF LEASE (this “Termination”) is made and entered into to be effective _____, 201__ by and between **THE CITY OF TEMPE**, an Arizona municipal corporation (“Landlord”), and **RP HFL LLC**, a Delaware limited liability company, successor to Hayden Ferry Lakeside, LLC (“Tenant”) and is as follows:

W I T N E S S E T H:

WHEREAS, the Landlord and Hayden Ferry Lakeside, LLC, an Arizona limited liability company (“HFL LLC”), previously executed that certain Lease, dated October 14, 2002 (the “Lease”), and that certain Memorandum of Lease, dated October 29, 2002, was recorded as Document No. 2002-1256967 of the records of the Maricopa County, Arizona Recorder (the “Memorandum”) with respect to the real property described therein (the “Premises”);

WHEREAS, HFL LLC thereafter assigned to Rockpoint Fund III Acquisitions, L.L.C., a Delaware limited liability company (“Rockpoint”), and Rockpoint assumed, HFL LLC's interest under the Lease and the Memorandum, pursuant to an Assignment and Assumption of City Lease and Amendment of Memorandum of Lease, dated July 15, 2010, and recorded July 16, 2010, as Document No. 20100607123 of the records of the Maricopa County, Arizona Recorder; and, immediately thereafter, Rockpoint assigned to Tenant, and Tenant assumed, Rockpoint's interest under the Lease and the Memorandum, pursuant to an Assignment and Assumption of City Lease and Amendment of Memorandum of Lease, dated July 15, 2010, and recorded July 16, 2010, as Document No. 20100607124, resulting in Tenant now holding all right, title and interest of the tenant/lessee under the Lease and the Memorandum; and

WHEREAS, simultaneously with to execution of this Termination, Landlord has conveyed the Premises to Tenant and, therefore, the parties desire to terminate the Lease

and the Memorandum and give constructive notice thereof to all parties dealing with the Premises.

NOW, THEREFORE, for Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereby agree that the Lease and the Memorandum are terminated effective October 14, 2010, and shall be of no further force or effect. The parties shall have no further obligations or liability whatsoever arising under the Lease, except that all liability and indemnification provisions of the Lease relating to periods prior to the termination date and which survive termination of the Lease by the terms thereof shall fully apply notwithstanding the termination of the Lease. Landlord hereby fully and absolutely releases and disclaims any and all right, title or interest in the Premises. From and after the effective date of this Termination, the Premises shall be owned by Tenant free from any effect of the Lease and the Memorandum.

This Termination shall be governed by the laws of the State of Arizona. Each party and the person signing for each party represents and warrants to the other that it has the full right, ability and power to enter into this Termination, and each party will indemnify and hold harmless the other from and against any and all liability, losses, costs, damages, claims, expenses and attorneys' fees of any kind incurred as a consequence or result of the breach by the representing party of the representation and warranty contained in this Termination. This Termination may be signed in counterparts, which when taken together shall constitute the entire agreement between the parties.

IN WITNESS WHEREOF, the parties have executed this Termination to be effective as of the date set forth above.

LANDLORD:

THE CITY OF TEMPE, an Arizona
municipal corporation

By:_____

Name:_____

Title:_____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by _____ the _____ of The City of Tempe, an Arizona municipal corporation, for and on behalf of said City.

Notary Public

My Commission Expires:

TENANT:

RP HFL LLC, a Delaware limited liability company

By: _____
Sean T. Walters, its Vice President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 201__ by Sean T. Walters, in his capacity as Vice President of RP HFL LLC, a Delaware limited liability company.

Notary Public

Notary Seal: